IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7239 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKINABEN WD/O. UMRAVMIYA

Versus

PATHAN UMRAVKHAN AMIRKHAN

Appearance:

MR JITENDRA M PATEL for Petitioners Nos. 1-6

MR AJ PATEL for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioners before this Court are the widow and the sons of one Akbarali Umravmiya. The said

Akbarali had inherited the suit land bearing Survey No.374/2 admeasuring 2-Acres and 35-Gunthas situated at Thasra from his father Umravmiya Mohammadmiya. The said Akbarali died in the year 1966. After his death, the suit land devolved upon the petitioners. In the month of October, 1983 or thereabout, one Umravkhan Amirkhan Pathan, the respondent herein, filed application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') before the Mamlatdar and ALT, Thasra and claimed tenancy over the suit land. According to the respondent, he was inducted as a tenant in the suit land by the deceased Akbarali Umravmiya some time before his death. Since then, the said Umravkhan was cultivating the suit land and that he was remunerated in crop-share. The landlords and the tenant had good-relations. All accounts were maintained in the name of the landlady, the petitioner no.1. The landlady lived alone at Thasra while her sons were residing at the place of their employment. Neither of them had agricultural implements nor any of them cultivated the suit land personally. The said Umravkhan Amirkhan thus claimed a concealed tenancy. The said application was allowed by the Mamlatdar and ALT, Thasra on 23rd October, 1984. The said order dated 23rd October, 1984 was challenged by the petitioners before the Deputy Collector, Kheda in Tenancy Appeal No.6628/1984. The said Appeal was allowed on 20th May, 1985. However, the said order dated 20th May, 1985 was set aside by the learned Gujarat Revenue Tribunal (hereinafter referred to as 'the Tribunal') under its judgment and order dated 5th August, 1988 passed in Revision Application No.TEN.B.A.446/1985. The order dated 23rd October, 1984 of the Mamlatdar was ordered to be restored. Feeling aggrieved, the petitioners have preferred the present petition.

#. Mr.Jitendra M.Patel, the learned advocate appearing for the petitioners has taken me through the records of the matter and more particularly the evidence of the respondent Umravkhan Amirkhan Pathan. He has submitted that the Deputy Collector had, under his order dated 20th May, 1988, correctly appreciated the evidence on record. The Tribunal, in exercise of its revisional jurisdiction, therefore, ought not to have interfered with the finding recorded by the Deputy Collector. He has submitted that the respondent has miserably failed in establishing his claim of tenancy. The respondent has not incurred any expenditure on agricultural operations, nor has he established that he was being paid in crop-share or that he was giving part of the crop to the landlady, the petitioner no.1. Even the receipt for sale

of agricultural produce produced by the respondent has not been proved, inasmuch as, the dealer concerned has denied the payment made to the respondent. Thus, the respondent failed to establish that he had cultivated the suit land for 20 years as claimed or that he had paid rent to the petitioners. The respondent did not pay the land revenue, nor did he prove that he was being paid in crop share.

#. Mr.Jitendra M.Patel has, in support of his arguments, relied upon the judgment of this Court in the matter of RAJ MADHAVSANG GULABSANG v. PARMAR RANCHHODBHAI GALABSANG & ORS. [17 GLR 689] and of the Hon'ble Supreme Court in the matter of GOPALA GANU WAGALE v. SHRI NAGESHWARDEO PATAS ABHISHEKH ANUSTHAN TRUST, PATAS [AIR 1978 S.C. 347].

#. The petition is contested by the learned advocate Mr.AJ Patel. He has submitted that the respondent had, from the very beginning, claimed a concealed tenancy. The respondent, therefore, had not produced any documentary evidence of his tenancy, but the tenancy has to be culled from the oral evidence given by the respondent and other witnesses in his favour. He has submitted that the Mamlatdar and ALT has discussed the evidence in detail and has found that the respondent was cultivating the said land for 20 years and that he was giving a share in the crop to the petitioners. He has submitted that the approach of the Deputy Collector is perfunctory. In view of the concurrent finding recorded by the Mamlatdar & ALT and the Tribunal, this Court should not interfere with the impugned order.

#. The learned advocate Mr.AJ Patel has, in support of his arguments, relied upon the judgment of this Court in the matters of DESAIBHAI SHANABHAI PATEL & ANR. v. BHULABHAI PRABHUDAS PATEL AND ORS. [1996(1) GLH 170], RATHOD PUNJABHAI DEVABHAI Through His Heirs & LRs. RUKHIBEN Wd/o. PUNJABHAI, & ORS. v. STATE OF GUJARAT & ORS. [28(1) GLR 104] and CHHAGAN RANCHHOD KUKVAVA v. GENERAL MANAGER, WESTERN RAILWAY, BOMBAY & ANR. [1998(1) GLR 461]. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of MOHD. YUNUS v. MOHD. MUSTAQIM AND ORS. [AIR 1984 S.C. 38].

#. As recorded hereinabove, I have perused the entire record more particularly the evidence given by the respondent. It is true that the Mamlatdar and ALT has, under his order dated 23rd October, 1984, recorded the oral evidence in great details. However, he appears to have left the matter there i.e. he has failed to

appreciate the oral evidence and come to a definite finding. No finding has been recorded by the Mamlatdar as regards the reliability of such oral evidence, nor has he discussed the documentary evidence. In fact, the Mamlatdar has not undertaken the exercise of weighing the evidence at all. The claim of tenancy made by the respondent has been accepted without recording a specific finding in favour of the respondent. Hence, in my view, the order of the Mamlatdar and ALT suffers from the vice of non-application of mind. The Deputy Collector has considered the oral evidence under his order dated 20th May, 1985. He, however, did not find the oral evidence given in favour of the respondent to be dependable or reliable. He has also recorded the reasons why particular evidence is not dependable or reliable. In absence of any documentary evidence or reliable oral evidence, the Deputy Collector, in my view, correctly dismissed the claim made by the respondent. The Tribunal, however, was of the view that the Deputy Collector had failed to appreciate the oral evidence correctly. The Deputy Collector ought to have believed the oral evidence given in favour of the respondent. I am afraid, the Tribunal, in its revisional jurisdiction, ought not to have entered into the arena of appreciation of evidence. Whether or not to believe a particular piece of oral evidence, is part of the task of appreciation of evidence, which should not be interfered with in exercise of revisional jurisdiction unless it is shown to have resulted into miscarriage of justice.

#. In the matter of Raj Madhavsang Gulabsang (supra), this Court had an occasion to examine the scope of the jurisdiction of the Revenue Tribunal under Section 76(1) of the Act. The Court has held that, "the jurisdiction of the Revenue Tribunal under sub-section (1) of Section 76 of the Act is, inter alia, confined to the correction of an error in appreciating important evidence which has resulted in the miscarriage of justice. Correction of an error in appreciating important evidence which has resulted in the miscarriage of justice can not be equated with the power to reappreciate the entire evidence." In the matter of Gopala Ganu Wagale (supra), the Hon'ble Supreme Court has examined the nature of jurisdiction of the High Court under Article 227 of the Constitution of India. The Hon'ble Court has held that, "the High Court, in the exercise of its powers under Article 227, can not function as a court of appeal and is generally bound by the findings of fact recorded by the Tribunal below." However, on facts, the Hon'ble Court upheld the decision of the High Court.

In the matter of Desaibhai Shanabhai Patel (supra), this Court has held that, "whether or not respondent was the tenant of the disputed land prior to 1st April, 1957 was a question of fact and all the three authorities below have concurrently held that he was the tenant of the disputed land. It would not be open to this Court in exercise of its limited powers under Article 227 of the Constitution of India to upset this concurrent finding of fact recorded by the three authorities below." In the matter of Mohd. Yunus (supra) similar was the question before the Hon'ble Supreme Court. The Hon'ble Court held that, "the Supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited 'to seeing that an inferior Court or Tribunal functions within the limits of its authority' and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision." In the matter of Rathod Punjabhai Devabhai (supra) the Court has relied upon the earlier decision in the matter of Raj Madhavsang (supra) and held that, "the insertion of the aforesaid words in clause (c) of sub section (1) of Section 76 of Gujarat Act has clearly widened the scope of the jurisdiction of the Revenue Tribunal and the Revenue Tribunal is entitled because of the insertion of those words to interfere if there has been 'an error in appreciating important evidence' which has resulted in the miscarriage of justice." Similar is the view expressed by this Court in the matter of Chhagan Ranchhod (supra).

#. In the present case, the petitioners have produced ample documentary evidence to prove their possession and personal cultivation of the suit land all along. Besides, it is the petitioners who have paid the land revenue, education cess, etc. during the years in question. Further, there is no reason to believe that since some of the petitioners have not been residing at Thasra the suit land was not under their personal cultivation. It should not be ignored that atleast two of the petitioners have been residing at Thasra. Moreover, there is not even an iota of documentary evidence to establish the possession of the respondent of the suit land or the cultivation of the suit land by the respondent at any time. In my view, therefore, the Deputy Collector, Kheda was right in dismissing the application made by the respondent under Section 70(b) of

the Act. The Tribunal ought not to have exercised its revisional jurisdiction to upset the finding recorded by the Deputy Collector, Kheda.

#. For the above reasons, the petition is allowed. The impugned judgment and order dated 5th August, 1988 passed by the learned Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.446/1985 is quashed and set aside. The order of the Deputy Collector, Kheda dated 20th May, 1985 made in Tenancy Appeal No.6628/1984 is restored. Rule is made absolute with cost.

(Ms. R.M. Doshit, J.)

/sakkaf